IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 21 OF 2006

IN

APPEAL NO. 928 OF 1997

IN

NOTICE OF MOTION NO. 1975 OF 1994

IN

SUIT NO. 2941 OF 1994

Shree Padmanabh Builders. ...Petitioners

Vs.

Studiarch & Ors. ...Respondents

Mr. P.K.Dhakephalkar, Senior Advocate i/b. A.L. Gala for the petitoners.

Mr. Mihir B. Jani for Respondent No.1.

Mr. D.H.Mehta i/b. S.Pathak & Co. for Respondnts Nos. 2 to 4.

Mr. Ravindra Parekh i/b. Ms. S.S.Pawan for Respondent No.5.

Mr. C.Ardeshir i/b. J.J. Saxena for Respondents Nos. 6 & 7.

CORAM: S.K.SHAH,J.

DATE : 1st September,2006.

P.C.

1. The contempt is alleged of the order dated 10.9.1997 whereby the defendants Nos. 2, 3 and 4, who are Respondents herein, were directed to place an affidavit and also inform the Plaintiffs' Attorney/Advocate if they want to alienate or transfer or part with possession of the suit property. It was further directed that the affidavit and intimation should be prior to they taking any steps qua the suit property.

2. The allegation is that no prior intimation was given and the property was disposed of. In reply, the contention of the Respondents is that the notice of intimation was sent to the Advocate for the petitioner on 1.4.2005. However, it was not served. The property came to be sold on 4.4.2005. Thereafter, by letter dated 13th April, 2005, addressed to the Advocate for the Petitioner, it was intimated that the property was already sold and the intimation was given on 1.4.2005. It is under these circumstances, the contempt is alleged to have been committed.

3. The learned Counsel for the Respondents submits that the petition is not maintainable as the petition is filed by the Constituted Attorney, Mr. Kanayalal Madhavji Thakkar of Shree Padmanabh Builders. he further submits that the present position is that

Padmanabh Builders has revoked the power of attorney given to Mr. Kanayalal Madhavji Thakkar and, therefore, the petition is not maintainable. He also submits that Padmanabh Builders has also filed a suit for declaration that the power of attorney granted in favour of Padmanabh Builders has been revoked. Therefore, it appears that there is dispute whether Kanayalal Thakkar is having the power of attorney on behalf of Padmanabh Builders. It is material to be noted that the said Padmanabh Builders are not coming forward to make statement. Under these circumstances, the person who has come forward and filed this Petition is not the person duly authorised by Padmanabh Builders on whose behalf the orders were obtained. The Contempt Petition, in my view, cannot be entertained as filed by the person not concerned with the subject matter of this petition.

4. Under the circumstances, I do not find that this Contempt Petition is maintainable. The Contempt Petition is, therefore, dismissed.

(S.K.SHAH,J.)